THE KAH WAH BANK LTD

v.

LOW CHUNG SONG & ORS

HIGH COURT MALAYA, KUALA LUMPUR
HAIDAR MOHD NOOR J
[SUIT NO: D5-24-170-91]
29 AUGUST 1997

CIVIL PROCEDURE: *Reciprocal enforcement of judgments - Service - Territorial restriction to service - Service effected in Kuala Lumpur whereas it was a term of the order that service be effected in Hong Kong - Whether such service improper*

This was an application ('encl 23') for the service of the amended order dated 11 December 1991 and the notice of registration of foreign judgment dated 23 November 1995 purportedly effected on the 2nd defendant on 3 September 1996 to be set aside.

According to the facts, the plaintiff had prayed by way of an originating summons that para 2 of the judgment dated 7 July 1991 of the Supreme Court of Hong Kong be registered as a judgment of the High Court of Malaya pursuant to the Reciprocal Enforcement of Judgments Act 1958 ('the 1958 Act'). The originating summons was amended on 11 December 1991 to be read and heard as an *ex parte* originating summons, hence the amended order. It was one of the terms of the amended order that service be effected on the 2nd defendant in Hong Kong.

The plaintiff managed to serve the amended order on the 2nd defendant in Kuala Lumpur. However, the 2nd defendant refused to sign acknowledgment of receipt on the documents. He subsequently filed encl 23.

The issue was whether service could be deemed to be good service on the face of the terms of the amended order that such service was to be effected in Hong Kong.

Held:

[1] There was a limited order for service of the documents on the 2nd defendant in Hong Kong and since service was effected in Malaysia, such service could not properly be said to be good service as it was effected without leave of court.

[Application allowed; service set aside.]

Case referred to:
Bonwell v. Preston [1908] 24 TLR 756 ***(foll)***

Legislation referred to:
Rule of the High Court 1980, O. 20 r. 11, O. 67

For the creditor - Christopher Leong; M/s Chooi & Co
For the debtor - David Morais (Gopal Sreenevasan with him); M/s Sivananthan

JUDGMENT

Haidar Mohd Noor J:

There were two applications before me, namely:

(1) An application by the second defendant dated 27 September 1996 (encl. 23) pursuant to O. 67 of the Rules of the High Court 1980 ('RHC') and the Reciprocal Enforcement of Judgments Act 1958 ('Act').

(2) An application by the plaintiff dated 27 May 1997 (encl. 42) pursuant to O. 20 r. 11 of RHC.

In encl. 23, the second defendant seek the following orders:

1. That the service of the amended Order dated 11 December 1991 and the Notice of Registration of Foreign Judgment dated 23 November 1995 of this honourable court purportedly effected on the 2nd defendant on 3 September 1996 be set aside;

2. In the alternative, that the registration of the judgment of the Supreme Court of Hong Kong 1987, No. A4191 dated 9 July 1991 pursuant to the Notice of Registration of Foreign Judgment dated 23 November 1995 be set aside.

3. Further and/or in the alternative, that the hearing of this summons be adjourned until the expiration of such period as appears necessary to be reasonably sufficient to enable the 2nd defendant to challenge the judgment of the Supreme court of Hong Kong 1987, No. A4191 dated 9 July 1991;

4. Further and/or in the alternative, that execution of the judgment of the Supreme Court of Hong Kong 1987, No. A4191 dated 9 July 1991 pursuant to the Notice of Registration of Foreign Judgment dated 23 November 1995 of this honourable court, be stayed pending the determination of an application to be lodged in the Supreme Court of Hong Kong to challenge the judgment of the Supreme Court of Hong Kong 1987, No. A4191 dated 9 July 1991 and pending the determination of the application herein;

5. That the costs of this application be paid by the plaintiff to the 2nd defendant;

6. Such further or other relief and directions as this honourable court deems just and fit.

It is supported by the affidavit of Low Chang Hian, the second defendant (encl. 21) and the affidavit of M. Puvanandran, an advocate and solicitor of the High Court, Singapore and practising at Messrs. Nathan Isaac & Co. of 111, Northbridge, #23-02, Peninsula Plaza, Singapore 179098.

In encl. 42, the plaintiff seeks the following orders:

1. that the Amended Order dated 11 December 1991 be amended pursuant to O. 20 r. 11 of the Rules of the High Court 1980 in the manner shown in green, a copy of which is annexed hereto as Annexure "A";

2. that costs of this application be borne by the plaintiff;

3. such further or other order as this honourable court deems fit to grant.

It is supported by the affidavit of Lim Boon Kick, an officer of the plaintiff (encl. 41).

Initially, both counsels agreed that the court should proceed to hear encl. 42 first. However, after a short adjournment for counsels to sort out matters, on reflection, I was of the opinion that the court should proceed to hear encl. 23 first. I then directed that encl. 23 be heard first as it was filed earlier than encl. 42 and a perusal of the nature of the application *vide* encl. 42 would seem to try and defeat the application *vide* encl. 23. As encl. 23 was handled by Mr. Christopher Leong as counsel for the plaintiff and he was away in Hong Kong I allowed the adjournment of encl. 23 so that Mr. Christopher Leong can argue. Mr. David Morais, counsel for the second defendant, did not object to the adjournment.

At the hearing of encl. 23, both counsels submitted skeletal submissions.

After hearing both counsels, I allowed the application of the second defendant in terms of prayers (1) and (2) and costs.

The plaintiff filed an appeal confining only to the order granting prayer (1), that is, service issue.

Prayer (1)

The service of the Amended Order dated 11 December 1991 and the Notice of Registration of Foreign Judgment dated 23 November 1995 of this Honourable Court purportedly effected on the 2nd defendant on 3 September 1996 be set aside.

The plaintiff by way of an originating summons dated 23 August 1991 (encl. 1) prays that para. 2 of the judgment dated 9 July 1991 of the Supreme Court of Hong Kong whereby it was adjudged that the 1st to 4th defendants do pay the plaintiff the sums of HK$114,047,621.47 and US$2,570,585.53 together with interest thereon at the judgment rate until payment may be registered as a judgment in the High Court of Malaya pursuant to the Act.

The originating summons is supported by the affidavit of Mr. Christopher S.F. Leong, the solicitor having conduct of the matter (encl. 2).

The judgment of the Supreme Court of Hong Kong is exhibited as "CL-1" to encl. 2.

By way of an order of the court obtained on 11 December 1991, (encl. 8) it was ordered that the originating summons be read and heard as an *ex parte* originating summons

It would be convenient to reproduce the Order dated 11 December 1991 (which was amended on 30 June 1993) as it is a relevant factor for the consideration of the court in determining the issue before it. The Order reads:

BEFORE THE HONOURABLE JUSTICE DATO' V.C. GEORGE
HIGH COURT KUALA LUMPUR
THIS 11TH DAY OF DECEMBER 1991 IN CHAMBERS

AMENDED ORDER

UPON THE APPLICATION of the Ka Wah Bank Limited the Judgment Creditor in this action **AND UPON READING** the Originating Summons dated 23rd day of August 1991 and the affidavit of Christopher S.F. Leong affirmed on the 23rd day of August 1991 both filed herein **AND UPON HEARING** Mr. Christopher S.F. Leong of counsel for the abovenamed Judgment Creditor **IT IS ORDERED** that the aforesaid Originating Summons be hereby read and heard as an Ex Parte Originating Summons **AND IT IS ORDERED** that leave be granted to the abovenamed The Ka Wah Bank Limited to amend the aforesaid Originating Summons by adding the words "..., 1987, No. A4191..." after the words "... High Court In The Supreme Court of Hong Kong ..." AND IT IS ORDERED that paragraph 2 of the judgment dated the 9th day of July 1991 of the High Court In The Supreme Court of Hong Kong, 1987, No.

A4191 whereby it was adjudged that the abovenamed Low Chung Song, Low Chang Hian, Low Chun Seng and Victor Tan Khai Chong do pay the abovenamed The Ka Wah Bank Limited the sums of HK$114,047,621.47 and US$2,570,585.53, which is equivalent in Ringgit to RM41,855,477.08 and RM7,184,786.56 respectively, together with interest thereon at the judgment rate until payment, which is 12.66% per annum from 9 July 1991 to 31 July 1991 and thereafter at 13.5% per annum from 1 August 1991 until payment, be registered as a judgment of the High Court of Malaya pursuant to the Reciprocal Enforcement of Judgment Act 1958.

IT IS FURTHER ORDERED that the abovenamed Low Chung Song, Low Chang Hian, Low Chun Seng and Victor Tan Khai Chong be at liberty to apply to set aside the said registration within 30 days after service upon them in Taiwan (Republic of China), Hong Kong, Taiwan (Republic of china), and Taiwan (Republic of China) respectively of the notice of such registration pursuant to rule 7 of order 67 if they have grounds for so doing, and execution upon the said judgment will not issue until after the expiration of that period or any extension of the period granted by the Court; or if an application be made to set aside the registration until such application has been disposed of.

IT IS ORDERED that the abovenamed Low Chung Song, Low Chang Hian, Low Chun Seng and Victor Tan Khai Chong do pay the costs of this application.

Dated this 11th day of December, 1991.

(L.S.)

SENIOR ASSISTANT REGISTRAR
HIGH COURT OF MALAYA
KUALA LUMPUR.

On 22 November 1995 the plaintiff filed Request For Service Of Document Abroad and Notice of Registration of Foreign Judgment (encl. 17) on the second defendant. The attempt to serve the documents on the second defendant in Singapore was apparently not successful (see encls. 19 and 20).

However, it seemed the plaintiff managed to serve the amended Order dated 11 December 1991 and the Notice of Registration of Foreign Judgment together with the accompanying letter dated 2 September 1996, on the second defendant on 3 September 1996 at about 10.50 am at the Public Lobby, Ground Floor, Wisma Denmark, 86, Jalan Ampang, 50450 Kuala Lumpur. (See the affidavit of service of Lim Boon Kick, an officer of the plaintiff at encl. 20a). Lim Boon Kick deposed that he knew the second defendant and further deposed that after the second defendant read the documents and the accompanying letter, he (the second defendant) threw the documents on the floor and refused to sign acknowledgement of receipt of the documents on the accompanying letter.

In the result, the second defendant filed encl. 23.

By the terms of the amended Order dated 11 December 1991 it was specially ordered that service be effected on the second defendant in Hong Kong. I do not think that it can be disputed that ordinarily service by Lim Boon Kick on the second defendant here can be said to be not a good service under the RHC. What is at issue here is whether such service can be deemed to be good service on the face of the terms of the amended Order that such service is to be effected in Hong Kong. Perhaps the case of *Bonwell v. Preston* [1908] XXIV TLR 756 may be of assistance in this respect.

In *Bonwell's* case, the order was for service of the writ out of jurisdiction on the defendant "at Yokohama or elsewhere in the Empire of Japan" and the defendant left Yokohama and went to Hong Kong where it was served upon him. It was held by the Court of Appeal that since there was a limited order for service of the writ out of jurisdiction, that is, limited to Yokohama or some other place in the Empire of Japan, and that it was served in Hong Kong, clearly the service was not effected with leave of the court. Similarly here, there was a limited order for service of the documents on the 2nd defendant in Hong Kong and since the service was effected in Malaysia, such service cannot properly be said to be good service as it was not effected with leave of the court.

In the result I ruled that the service of the amended Order including the Notice of Registration of Foreign Judgment dated 23 November 1995 was bad and set it aside.

Reported by Mariette Peters-Goh